

**ORDINANCE NO. 2**

**SERIES NO. 2021**

**An Ordinance of the Crested Butte Town Council Approving the Lease of 308 3<sup>rd</sup> Street Unit K (a Town owned property) to Artists of Crested Butte, a Colorado non-profit organization**

WHEREAS, the Town of Crested Butte, Colorado (the "Town") is a home rule municipality duly and regularly organized and now validly existing as a body corporate and politic under and by virtue of the Constitution and laws of the State of Colorado; and

WHEREAS, pursuant to Section 31-15-713 (c), C.R.S., the Town Council may lease any real estate, together with any facilities thereon, owned by the Town when deemed by the Town Council to be in the best interest of the Town; and

WHEREAS, pursuant to Section 713 (c), when the term of such lease is more than one year, the Town Council must approve such lease by ordinance of the Town Council; and

WHEREAS, the Town Council and Artists of Crested Butte wish to enter into a Business Lease attached hereto as Exhibit A; and

WHEREAS the Town Council finds hereby that approving leases of various Town properties for use by certain entities is in the best interest of the Town.

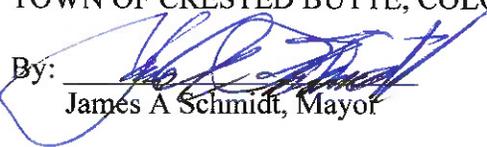
NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO, THAT:

1. **Findings**. The foregoing recitals are hereby fully incorporated herein.
2. **Authorization of Town Manager or Mayor**. Based on the foregoing, the Town Council hereby authorizes the Town Manager or Mayor to execute a lease in substantially the same form as attached hereto as **Exhibit "A"**.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS SIXTEENTH DAY OF FEBRUARY, 2021

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS FIRST DAY OF MARCH, 2021

TOWN OF CRESTED BUTTE, COLORADO

By:   
James A Schmidt, Mayor

ATTEST

Lynelle Stanford, Town Clerk

(SEAL)

**EXHIBIT "A"**

**BUSINESS LEASE**

THIS LEASE AGREEMENT (this "Lease") is entered into this 1<sup>st</sup> day of March, 2021, with an effective date of March 1, 2021 (the "Effective Date") by and between the TOWN OF CRESTED BUTTE, COLORADO, a Colorado home rule municipality ("Landlord"), and Artists of Crested Butte, a Colorado nonprofit corporation ("Tenant").

**AGREEMENT:**

**Premises.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, upon to the terms and conditions as set forth in the Lease, certain office and studio space located in the real property and building at 308 Third Street, Crested Butte, Colorado 81224, which is commonly known as Unit K and contains approximately 400 square feet. (the "Premises").

Tenant currently occupies the Premises and accepts the Premises in its "As Is" condition.

**1. Use; Parking; Maintenance; Utilities; Signage.**

(a) **Permitted Use.** Tenant may use and occupy the Premises solely for purposes in keeping with Tenant's purpose as a nonprofit corporation. Tenant will not use any part of the Premises, or any other parts of the property in which the Premises are located, for retail sales or any other uses without the written consent of the Landlord.

(b) **Parking and Public Facilities.** All public facilities on the property and in the building where the Premises are located will be utilized as directed by Landlord and not restricted by Tenant. There is no parking provided on the property where the Premises is located for Tenant, or its guests or invitees.

(c) **Tenant Maintenance.** During the Term of this Lease (as defined below), Tenant will provide routine maintenance, cleaning, and care of the Premises. All such maintenance, cleaning and care will be performed at Tenant's sole cost and expense.

(d) **Landlord Maintenance.** Landlord will provide regular grounds maintenance (e.g., lawn care, snow removal) on the property where the Premises is located.

(e) **Tenant Utilities.** Tenant will pay for the gas and electric utilities and communications services used by Tenant on the Premises during the Term, regardless of whether the utilities and services are billed directly to Tenant or Landlord bills tenant for its pro rata share of such utilities and services. If Landlord bills Tenant for the Tenant's pro rata share of utilities or services, Tenant agrees to pay such amounts as

additional rent within fifteen (15) days after delivery of an invoice from the Town for such charges.

(f) **Landlord Utilities.** Landlord will pay the expenses for water, sewer, and trash/recycling services for the Premises during the Term.

(g) **Signage.** Tenant will not install or place exterior signage on the Premises or the property or building where the Premises is located, without prior written approval of Landlord.

2. **Term.**

(a) Provided that Tenant is not in default under any term or condition of this Lease, Tenant will have and hold the Premises for a five (5) year period (the "**Term**") that will commence on the Effective Date hereof and expire five (5) years following the Effective Date. Either party may terminate the lease prior to initial term expiration date with at least 90 days' notice.

(b) At the expiration or earlier termination of this Lease, Tenant will surrender the Premises broom clean, in the same condition and repair as when Tenant initially took possession of the Premises on the Effective Date, ordinary wear and tear excepted. Tenant will fully repair any damage caused by the removal of any trade fixtures, equipment, furniture, alterations, additions, and improvements that were previously authorized by Landlord under Paragraph 5 of this Lease. All trade fixtures, equipment, furniture, alterations, additions, and improvements not so removed will conclusively be deemed to have been abandoned by Tenant and may be appropriated, sold, stored, destroyed, or otherwise disposed of by Landlord without notice to Tenant or to any other person and without obligation to account therefor. Tenant will pay Landlord all expenses incurred in connection with Landlord's disposition of such property, including the cost of repairing any damage to any improvements or the Premises caused by such removal. Tenant's obligation to observe and perform the foregoing requirements will survive the expiration or earlier termination this Lease.

3. **Rent; Additional Rent; Security Deposit.**

(a) **Rent.** The annual rent for the first year of the Lease Term is \$3,139.00 (\$261.60 per month) exclusive of any charges for utilities or other services for the Premises provided by Landlord for Tenant's use. Tenant will pay Landlord \$261.60 on the Effective Date of this Lease and on the first day of each month thereafter during the first year of the Term (the "**Rent**"). Tenant may also opt to pay the full amount for the upcoming year on the Effective Date and subsequent anniversaries. Rent will increase annually as follows:

1 <sup>st</sup> anniversary (2022):	\$3,170.39 annually / \$264.20 per month
2 <sup>nd</sup> anniversary (2023):	\$3,202.09 annually / \$266.84 per month
3 <sup>rd</sup> anniversary (2024):	\$3,234.11 annually / \$269.51 per month

4<sup>th</sup> anniversary (2025):            \$3,266.46 annually / \$272.20 per month

Tenant will pay Rent, any additional rent, and any other amounts due Landlord under this Lease at Landlord's address specified herein for notices, without prior demand and without any abatement, deduction, or setoff.

(b) **Late Charges.** Any Rent that is paid late will accrue interest at a rate of 1.5% per month until paid. Rent will be prorated for any partial month.

(c) **Security Deposit.** To secure the faithful performance by Tenant of all of Tenant's covenants, conditions, and agreements in this Lease to be observed and performed, Tenant will deposit with Landlord a security deposit (the "**Security Deposit**") upon execution of the Lease. Tenant's security deposit will be \$500.00. The Security Deposit may also be used in the event of termination of the Lease by re-entry, eviction, or otherwise. The parties agree that the Security Deposit or any portion thereof, may be applied to any Event of Default (as defined below) that may exist, and/or payment of subsequent damages and costs incurred by Landlord, without prejudice to any other remedy or remedies that Landlord may have on account thereof. If Tenant performs all of its respective covenants and agreements in the Lease, the Security Deposit, or the portion thereof not previously applied pursuant to the provisions of the Lease, together with a statement, will be returned to Tenant without interest, no later than sixty (60) days after the expiration of the Term, or any renewal or extension thereof (or such earlier time if required by applicable law), provided Tenant has vacated the Premises and surrendered possession thereof to Landlord.

(d) **Below Market Rent.** Tenant acknowledges that the lease rate under this Lease is substantially below market value for leasing of office space in Crested Butte as of the Effective Date. Below market lease rates are being offered in support of the community benefit provided by Tenant as a local non-profit. The following is provided for comparison on possible annual lease rates for this space if Tenant was not receiving the below market rate per this Lease:

\$10.00 per sq. ft.	\$4,000
\$15.00 per sq. ft.	\$6,000
\$20.00 per sq. ft.	\$8,000

4. **Landlord's Access.** Landlord, its agents, employees, and contractors may enter the Premises at any time without notice to Tenant in response to an emergency at the Premises, or the property or building where the Premises is located. Landlord may enter the Premises during regular business hours upon reasonable prior notice to Tenant for other reasons, including but not limited to: (i) inspecting the Premises; (ii) determining whether Tenant is complying with its obligations under this Lease; (iii) providing any service or maintenance that Landlord is required to provide; (iv) posting notices of non-responsibility or similar notices; or (v) making repairs which this Lease requires Landlord or Tenant to make. Any work of Landlord will be performed as promptly as possible after notice from Tenant. Landlord will perform any work so as

to cause as little interference to Tenant as reasonably possible, taking into account the nature and extent of such work. Landlord will at all times have a key with which to unlock all of the doors to the Premises (excluding Tenant's vaults, safes and similar areas designed in writing by Tenant in advance).

5. **No Alterations.** Tenant will not make any alterations, additions, repairs, restorations, or improvements to the Premises without Landlord's prior written consent. This does not affect Tenant's obligations to maintain the Premises as set forth in Paragraph 1(c).

6. **Compliance with Laws.**

(a) Tenant will not use or occupy, or permit any portion of the Premises to be used or occupied in violation of any law, ordinance, order, rule, regulation, certificate of occupancy or other governmental requirement, or the use limitations in Paragraph 1(a).

(b) Tenant's use of the Premises will comply with all applicable laws, ordinances and regulations relating to public health and safety and protection of the environment.

7. **No Nuisance or Unauthorized Use.** Tenant will not use the Premises or the property and building where the Premises is located, in a manner that constitutes a nuisance or is not consistent with the permitted use of the Premises. Without limiting the generality of the foregoing, Tenant will not keep, store, or accumulate vehicles, machinery, equipment, tools, refuse, scrap, debris, garbage, trash, bulk materials, used vehicle parts, or waste on the Premises, or the property and building where the Premises is located, at any time.

8. **Insurance.**

(a) At its sole expense, Tenant will obtain and keep in force during the Term commercial general liability insurance with a combined single limit of not less than One Million Dollars (\$1,000,000.00) for injury to or death of any one person, for injury to or death of any number of persons in one occurrence, and for damage to property, insuring against any and all liability of Landlord and Tenant, including coverage for contractual liability, broad form property damage, and non-owned automobile liability, with respect to the Premises or arising out of the maintenance, use or occupancy of the Premises. The insurance will be noncontributing with any insurance that may be carried by Landlord and will contain a provision that Landlord, although named as an insured, will nevertheless be entitled to recover under the policy for any loss, injury, or damage to Landlord, its agents, and employees, or the property of such persons.

(b) Tenant agrees and acknowledges that Landlord does not provide insurance for Tenant's personal property in the Premises or the interruption of Tenant's business in the event of loss due to fire, flood, theft, storms, vandalism, or similar causes.

Tenant will be responsible for obtaining renter's insurance, business interruption insurance, or other insurance to insure against losses of Tenant's property or interruption of Tenant's business due to such causes.

(c) Upon receipt of written notification from the Town, at Tenant's sole expense, Tenant will obtain and keep in force, during the Term, "all-risk" coverage naming Landlord and Tenant as their interests may appear and other parties that Landlord or Tenant may designate as additional insureds in the customary form for buildings and improvements of similar character, on all buildings and improvements now or hereinafter located on the Premises. Such coverage will include, without limitation, the historic replacement value of the Premises building structure. The amount of the insurance will be designated by Landlord no more frequently than once every twelve (12) months, will be set forth on an "agreed amount endorsement" to the policy of insurance and will not be less than the value of the buildings and improvements.

(d) All insurance required in this Section and all renewals of it will be issued by companies authorized to transact business in the State of Colorado, and rated at least A+ Class X by Best's Insurance Reports (property liability) or approved by Landlord. All insurance policies will be subject to approval by Landlord and any lender as to form and substance, said approval not to be unreasonably withheld or delayed; will expressly provide that the policies will not be canceled or altered without thirty (30) days' prior written notice to Landlord and any lender, and to Landlord in the case of general liability insurance; and will, to the extent obtainable without additional premium expense, provide that no act or omission of Tenant which would otherwise result in forfeiture or reduction of the insurance will affect or limit the obligation of the insurance company to pay the amount of any loss sustained. Tenant may satisfy its obligation under this Section by appropriate endorsements of its blanket insurance policies.

(e) All policies of liability insurance that Tenant is obligated to maintain according to this Lease (other than any policy of workmen's compensation insurance) will name Landlord and such other persons or firms as Landlord specifies from time to time as additional insureds provided such other persons have an insurable interest and does not result in any additional premium expenses. Original or copies of original policies (together with copies of the endorsements naming Landlord, and any others specified by Landlord, as additional insureds) and evidence of the payment of all premiums of such policies will be made available to Landlord prior to Tenant's occupancy of the Premises and from time to time at least thirty (30) days' prior to the expiration of the term of each policy. All public liability, property damage liability, and casualty policies maintained by Tenant will be written as primary policies, not contributing with and not in excess of coverage that Landlord may carry. No insurance required to be maintained by Tenant by this Section will be subject to any deductible in excess of \$20,000.00 without Landlord's prior written consent.

(f) Landlord and Tenant waive all rights to recover against each other, or against the officers, elected officials, directors, shareholders, members, partners, joint ventures, employees, agents, customers, invitees, or business visitors of each of theirs, for

any loss or damage arising from any cause covered by any insurance required to be carried by each of them pursuant to this Section or any other insurance actually carried by each of them. Tenant will cause its insurer to issue an appropriate waiver of subrogation rights endorsements to all policies of insurance carried in connection with the Premises and any personal property located on the same. Tenant will cause all other occupants of the Premises claiming by, under, or through Tenant to execute and deliver to Landlord a waiver of claims similar to the waiver in this Section and to obtain such waiver of subrogation rights endorsements.

9. **Indemnification; Tenant Waiver and Release.**

(a) **Indemnification.** Tenant will indemnify Landlord, its elected officials, officers, employees, agents, contractor, attorneys, insurers and insurance pools (the "**Landlord Parties**") against, and hold the Landlord Parties harmless from, any and all demands, claims, causes of action, fines, penalties, damages (including consequential damages), losses, liabilities, judgments, and expenses (including attorneys' fees and court costs) incurred in connection with or arising from: (i) the use or occupancy of the Premises by Tenant or any person or entity claiming under Tenant, the employees, agents, contractors, guests, invitees or visitors of Tenant ("**Tenant Related Persons**"); (ii) any activity, work, or thing done or permitted or suffered by a Tenant Related Persons in or about the Premises; (iii) any acts, omissions, or negligence of any Tenant Related Persons; (iv) any breach, violation, or nonperformance by any Tenant Related Persons of any term, covenant, or provision of this Lease or any law, ordinance or governmental requirement of any kind; or (v) any injury or damage to the person, property or business of a Tenant Related Person entering upon the Premises under the express or implied invitation of Tenant. If any action or proceeding is brought against any of the Landlord Parties by reason of any claim solely arising out of subparagraphs (i) through (v) above, upon notice from Landlord, Tenant will defend the claim at Tenant's expense with counsel reasonably satisfactory to Landlord.

(b) **Waiver and Release.** Tenant waives and releases all claims against Landlord Parties with respect to any loss, injury, death, or damage (including consequential damages) to persons, property, or Tenant's business caused by, without limitation, theft, acts of God, public enemy, pandemic, riot, strike, insurrection, war, court order, order of governmental body or authority to protect public health, fire, explosion, falling objects, steam, water, rain or snow, leak or flow of water (including water from the elevator system), rain or snow from the Premises or into the Premises or from the roof, street, subsurface, or from any other place, or by dampness, or from the breakage, leakage, obstruction, or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning, or lighting fixtures of the building, or from construction, repair, or alteration of the Premises or from any acts or omissions of any visitor of the Premises, or from any cause beyond Landlord's control.

10. **Default Provisions.**

(a) **Events of Default.** Tenant will be in default under this Lease if: (i) Tenant fails to pay rent or any other amount due under this Lease within for five (5) days after such amount is due; (ii) Tenant defaults in the performance of any other obligation under this Lease and such default is not cured after ten (10) days' written notice to Tenant (or, in case of any emergency, upon notice or without notice as may be reasonable under the circumstances); (iii) Tenant ceases to operate its business as a nonprofit corporation; (iv) Tenant uses the Premises for a purpose other than the permitted use allowed under Paragraph 1(a); or (v) Tenant vacates or abandons the Premises.

(b) **Landlord's Option Upon Default.** If Tenant fails to perform any of its non-monetary obligations under this Lease, then Landlord, after ten (10) days' written notice to Tenant (or, in case of any emergency, upon notice or without notice as may be reasonable under the circumstances) and without waiving any of its rights under this Lease, may (but will not be required to) pay the amount or perform the obligation. All amounts so paid by Landlord and all costs and expenses incurred by Landlord in connection with the performance of any obligations (together with interest at the prime rate from the date of Landlord's payment of the amount or incurring of each cost or expense until the date of full repayment by Tenant) will be payable by Tenant to Landlord on demand as additional rent. In the proof of any damages that Landlord may claim against Tenant arising out of Tenant's failure to maintain insurance that is required by terms of this Lease, Landlord will not be limited to the amount of the unpaid insurance premium but will also be entitled to recover as damages for the breach the amount of any uninsured loss (to the extent of any deficiency in the insurance required by the provisions of this Lease), damages, costs and expenses of suit, including attorneys' fees, arising out of damage to, or destruction of, the Premises occurring during any period for which Tenant has failed to provide the insurance.

(c) **Other Landlord Remedies.** If any one or more Events of Default occurs, then Landlord may, at its election, give Tenant written notice of its intention to terminate this Lease on the date of the notice or on any later date specified in the notice, and, on the date specified in the notice, Tenant's right to possession of the Premises will cease and this Lease will be terminated. In addition, landlord will have all other rights available at law and in equity, including, without limitation, recovery of actual damages, costs, and expenses, including reasonable attorneys' fees. All remedies may be cumulatively and concurrently applied and enforced.

11. **Assignment.** Tenant will not assign this Lease, or sublet the Premises, in whole or in part, without Landlord's prior written consent, which consent will not be unreasonably withheld.

12. **Notices.** All notices, demands, and requests required to be given by either party to the other will be in writing, and with a copy given to counsel for each such party as provided below. All notices, demands, and requests will be delivered personally or sent by electronic mail (e-mail), nationally recognized overnight courier, certified or registered mail, return receipt requested, postage prepaid, or via facsimile, addressed to the parties at the addresses set forth below or at such other addresses as the parties may

designate in writing delivered pursuant to the provisions hereof. Any notice when given as provided herein will be deemed to have been delivered on the day of delivery if delivered personally, on the first business day following the confirmation of sending of an e-mail when sent by electronic mail, on the first business day following deposit with the courier service when delivered by overnight courier, three business (3) days subsequent to the date that said notice was deposited with the United States Postal Service, or on the first business day following the date of confirmation of receipt when delivered by facsimile.

To Landlord:           Town of Crested Butte  
                                  P.O. Box 39  
                                  507 Maroon Avenue  
                                  Crested Butte, CO 81224  
                                  Facsimile: (970) 349-6626  
                                  Attn: Town Manager

To Tenant:             Artists of Crested Butte.  
                                  Shaun Horne  
                                  P.O. Box 1702  
                                  Crested Butte, CO 81224

13. **No Waiver.** No waiver of any condition or agreement in this Lease by either Landlord or Tenant will imply or constitute a further waiver by such party of the same or any other condition or agreement.
14. **Attorneys' Fees.** If a dispute arises between the parties in connection with this Lease and a party is required to commence legal action, the prevailing party will be entitled to recover and will be awarded (in addition to other relief granted) all reasonable attorneys' fees and costs in connection with such dispute from the non-prevailing party.
15. **Severability.** If any sentence, paragraph, or article of this Lease is held to be illegal or invalid, this will not affect in any manner those other portions of the Lease not illegal or invalid and this Lease will continue in full force and effect as to those remaining provisions.
16. **Successors and Assigns.** The conditions and provisions hereof will inure to the benefit of, and will be binding upon, Landlord, Tenant and their respective personal representatives, successors and permitted assigns.
17. **Immigration Compliance.** Tenant certifies that it has complied, and during the term of this Lease will continue to comply, with the Immigration Reform and Control Act of 1986. The signature of Tenant on this Lease: (1) certifies that Tenant is not a natural person unlawfully present in the United States; and (2) also certifies the statements below if this is a public contract for services as defined in Colo. Rev. Stat. § 8-17.5-101, et seq., and Tenant utilizes subcontractors or employees in Tenant's business. Tenant will not:

(a) knowingly employ or contract with an illegal alien to perform work under this Lease; or

(b) enter into a contract with a subcontractor that fails to certify to Tenant that the subcontractor will not knowingly employ or contract with an illegal alien to perform work under this Lease.

Tenant has confirmed the employment eligibility of all employees and subcontractors who are newly hired for employment to perform work under this Lease through participation in either the e-verify program or the department program (as defined in Colo. Rev. Stat. § 8-17.5-101, et seq.). Tenant may not use either the e-verify program or the department program procedures to undertake pre-employment screening of job applicants while this Lease is being performed. If Tenant obtains actual knowledge that a subcontractor performing work under this Lease knowingly employs or contracts with an illegal alien, Tenant will:

(i) notify the subcontractor and the Landlord within three (3) days that Tenant has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

(ii) terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to sub-subparagraph (a) of this subparagraph the subcontractor does not stop employing or contracting with the illegal alien; except that Tenant will not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Tenant will comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to state law. Tenant acknowledges that in the event Tenant violates any of the provisions of the foregoing the Town may terminate this Lease for breach of contract. No notice need be given of said termination. If this Lease is so terminated, Tenant will be liable for actual and consequential damages to the Landlord.

18. **Obligation to Report.** Tenant will report any material damage to the Premises or disturbances therein or thereon to Landlord as soon as Tenant becomes aware of any such damage or disturbances.

19. **Miscellaneous Provisions.**

(a) Each party represents and warrants that it has obtained any and all approvals necessary to enter into and perform the obligations contained in this Lease, if any.

(b) This Lease will be construed and enforced in accordance with the laws of the State of Colorado.

(c) This Lease is entered into at Crested Butte, Colorado, and it is agreed that the proper jurisdiction and venue of any action pertaining to the interpretation or enforcement of this Lease will be in the District Court of Gunnison County, Colorado.

(d) This Lease may be executed in multiple counterparts each of which will constitute an original, and both of which when taken together will constitute one and the same document. The parties hereby agree to accept facsimile or electronic copies of signatures as original signatures

(e) This Lease shall not be recorded. Any recordation of this Lease or any memorandum thereof, or the recordation of any encumbrance against the Premises, including any mortgage of Tenant, will be void *ab initio* and a default under this Lease.

(f) This Lease constitutes the entire and exclusive agreement between the parties relating to the specific matters covered herein. Any other agreements between the parties, whether written or oral are hereby merged herein and of no further force and effect.

(g) This Lease may be amended, modified, or terminated only by a written instrument executed by Landlord and Tenant.

[Remainder of Page Intentionally Left Blank;  
Signature Page(s) to Follow]

EDMUNDSON  
EDMUNDSON  
E. Edmundson

Kenell J. J.



Shawn Harne  
president of Artists of Crested Butte.

3/11/2021